

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 17, 2010

TO: Persons on the attached mailing list.

RE: Texas Concrete Enterprise, L.L.C.  
Permit No. 91708

### **Decision of the Executive Director.**

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter is a copy of the Executive Director's Amended Response to Comments filed August 16<sup>th</sup>, 2010 which supersedes the one filed August 13, 2010. Please find that Response 2 has been clarified to include additional information about the TCEQ's use of the U.S. EPA's surrogacy policy as it relates to particulate matter. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the TCEQ central office, the TCEQ Houston Regional office, and at the Kendleton City Hall, 430 FM 2919 Road, Kendleton, Fort Bend County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

### **How To Request a Contested Case Hearing.**

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have

your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
  - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
  - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities. A person who may be affected by emissions of air contaminants from the facility is entitled to request a contested case hearing. A person permanently residing within 440 yards of a concrete batch plant under a permit by rule is an affected person who is entitled to request a contested case hearing.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Amended Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you

dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

### **How To Request Reconsideration of the Executive Director's Decision.**

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

### **Deadline for Submitting Requests.**

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at <http://www.tceq.state.tx.us/about/comments.html> or by mail to the following address:

LaDonna Castañuela, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

### **Processing of Requests.**

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

### **How to Obtain Additional Information.**

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,

  
LaDonna Castañuela  
Chief Clerk

LDC/er

Enclosures

MAILING LIST  
for  
Texas Concrete Enterprise, L.L.C.  
Permit No. 91708

FOR THE APPLICANT:

Deboraha Demps, Safety Director  
Texas Concrete Enterprise, L.L.C.  
3506 Cherry Street  
Houston, Texas 77026-3502

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR  
via electronic mail:

Alexis Lorick, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087

Michael Gould, Technical Staff  
Texas Commission on Environmental Quality  
Air Permits Division MC-163  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE  
via electronic mail:

Bridget Bohac, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL  
via electronic mail:

Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR THE CHIEF CLERK  
via electronic mail:

LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

DILLARD , CORNELL  
12966 WINTERBERRY WAY  
MORENO VALLEY CA 92553-1228

DILLARD , LAWRENCE  
3811 TANKERSLEY CIR  
ROSFARON TX 77583-8223

DILLARD , NORRIS  
4922 MAYFLOWER ST  
HOUSTON TX 77033-3523

NEWKIRK , SANDI  
PO BOX 774  
KENDLETON TX 77451-0774

RASHEED , HASAN  
12302 GLENN RIVER DR  
HOUSTON TX 77050-3808

SMITH , FLORA BROWN  
PO BOX 61  
KENDLETON TX 77451-0061

TAYLOR , A M  
12506 PINK TAYLOR RUN RD  
BEASLEY TX 77417-9648

TAYLOR , CHARLES  
5410 TALLOW LN  
HOUSTON TX 77021-3036

TAYLOR , CHARLES  
12727 PINK TAYLOR RUN RD  
BEASLEY TX 77417-9647

TAYLOR , OSCAR  
12506 PINK TAYLOR RUN RD  
BEASLEY TX 77417-9648

**TCEQ AIR QUALITY STANDARD PERMIT FOR CONCRETE BATCH PLANTS**  
**REGISTRATION NUMBER 91708**

2010 AUG 16 PM 2:14

APPLICATION BY	§	BEFORE THE	CHIEF CLERKS OFFICE
	§		
TEXAS CONCRETE	§		
ENTERPRISE, L.L.C.	§	TEXAS COMMISSION ON	
	§		
KENDLETON, FORT BEND COUNTY	§	ENVIRONMENTAL QUALITY	

**EXECUTIVE DIRECTOR'S AMENDED RESPONSE TO PUBLIC COMMENT**

The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on New Source Review Authorization application (Application) of Texas Concrete Enterprise, L.L.C.

As required by Title 30 Texas Administrative Code (TAC) § 55.156, before an application is approved, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received six comment letters from Ms. Sandi Newkirk, Mr. Charles Taylor, Ms. Hazel Taylor, Ms. Flora Smith, Mr. Lawrence Dillard, Mr. Hasan Rasheed, Mr. Oscar Taylor, and Ms. Arlilia Taylor. This Response addresses all timely public comments received. If you need more information about this permit application or the permitting process please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

**BACKGROUND**

Description of Facility

Texas Concrete Enterprise, L.L.C. (Texas Concrete or Applicant) has applied to the TCEQ for an Air Quality Standard Permit for Concrete Batch Plants under Texas Clean Air Act (TCAA), Texas Health & Safety Code § 382.05198. Issuance of the permit by the commission will authorize the construction of a new facility that may emit air contaminants.

This permit will authorize Texas Concrete to construct and operate a concrete batch plant. The facility is to be located near Kendleton, Fort Bend County, Texas by using the following driving directions: Take 59 South exit to Kendleton; go right on FM Road 2919 to Pink Taylor Run; keeping to the right, the plant is located before West Tavener Road. The contaminants authorized under this permit include road dust, aggregate, and cement. The contaminants emitted also have the potential to contain particles less than or equal to 10 microns in aerodynamic diameter (PM<sub>10</sub>), and particles less than or equal to 2.5 microns in aerodynamic diameter (PM<sub>2.5</sub>).

## EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

Texas Concrete Enterprise, L.L.C. No. 91708

Page 2 of 6

### Procedural Background

Before construction of a new facility that may emit air contaminants begins, Texas Concrete must obtain an Air Quality Standard Permit from the commission. This Application is for the initial issuance of Registration Number 91708.

The Application was received on January 20, 2010, and declared administratively complete on January 28, 2010. Public notice through the Notice of Receipt of Application and Intent to Obtain an Air Quality Permit (Public Notice) Registration for this permit application was published on February 4, 2010 in the *Fort Bend Sun*. An alternative language Public Notice was published in *La Subasta* on February 25, 2010. Several hearing requests were timely received by the TCEQ; therefore, Texas Concrete was required to publish a second public notice. The second public notice, or the Notice of Application and Preliminary Decision for an Air Quality Standard Permit, was published on May 13, 2010 in the *Fort Bend Sun*. An alternative language Public Notice was published April 29, 2010 in *La Subasta*. The public comment period ended on June 14, 2010.

### COMMENT AND RESPONSE

**COMMENT 1:** All commenters were concerned regarding inadequate sign posting.

**RESPONSE 1:** 30 TAC § 39.604, Sign-Posting, requires the Applicant to place signs at the site of an existing or proposed facility about the pending permit application. The sign(s) must declare the filing of an application for a permit and state the manner in which the commission may be contacted for further information. The content of these signs must be in English, and may be in an alternative language depending on whether the Applicant is required to comply with publishing Public Notice in an alternative-language newspaper. After the Applicant has posted signs in accordance with § 39.604, it must then verify to the commission that the sign posting was conducted in accordance with TCEQ rules. Section 39.604 requires specifically that each sign placed at the site be located within ten feet of every property line paralleling a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign is required, but no more than three signs are required along any property line paralleling a public highway, street, or road. Texas Concrete verified to the commission that required signs were posted in accordance with state rules and regulations.

**COMMENT 2:** All commenters were concerned that potential emissions from the Applicant's facility would affect their health, agricultural crops, cattle, and livestock.

**RESPONSE 2:** The stated purpose of the TCAA is to "safeguard the state's air resources from pollution by controlling or abating air pollution and emission of air contaminants," for facilities such as the one Texas Concrete proposes to build. The Agency accomplishes this purpose through the use of its Air Quality Standard Permit for Concrete Batch Plants approved in 2000. The TCEQ's Standard Permit contains technical requirements with which each facility issued a

## EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

Texas Concrete Enterprise, L.L.C. No. 91708

Page 3 of 6

permit must comply. The technical requirements contained in a Standard Permit include compliance with the National Ambient Air Quality Standards (NAAQS) for particulate matter, which were designed for the protection of sensitive members of our population—children, the elderly, and those with existing respiratory or cardiovascular conditions.

Particulate matter NAAQS were created by the U.S. Environmental Protection Agency (EPA). The NAAQS defined in 40 Code of Federal Regulations (C.F.R.) § 50.2, include both primary and secondary standards. Primary standards are those which the Administrator of the EPA determines are necessary, within an adequate margin of safety, to protect public health. Secondary standards are those which the Administrator determines are necessary to protect the public welfare and the environment, including animals, crops, vegetation, and buildings, from any known or anticipated adverse effects associated with the presence of an air contaminant in the ambient air. The standards are set for criteria pollutants that are respirable particulate matter. Respirable particulate matter is matter with an aerodynamic diameter of less than or equal to 10 microns in diameter, and below.

Particulate matter consists of solid particles and liquid droplets found in the air, and includes PM, total suspended particulates, PM<sub>10</sub>, and PM<sub>2.5</sub>. PM<sub>10</sub> particles are referred to as "coarse" particles and PM<sub>2.5</sub> particles are referred to as "fine" particles. Sources of coarse particles include wind-blown dust, dust generated by vehicles traveling on unpaved roads, material handling, and crushing and grinding operations. Fine particles are usually produced via industrial and residential combustion processes, and vehicle exhaust. Pursuant to the EPA PM<sub>2.5</sub> surrogate policy, the TCEQ uses the PM<sub>10</sub> program as a surrogate for the PM<sub>2.5</sub> program until the EPA fully implements and integrates PM<sub>2.5</sub> into the New Source Review program. During the development of the standard permit, EPA allowed a PM<sub>10</sub> NAAQS evaluation to be a reasonable surrogate for the PM<sub>2.5</sub> program. Additionally, the 24-hour NAAQS for PM<sub>2.5</sub> is approximately 23% of the 24-hour NAAQS for PM<sub>10</sub>. Current PM<sub>2.5</sub> emission factors and particle size multipliers identified for use in the concrete batch plant calculations typically range from approximately 15 to 23% of the PM<sub>10</sub> emission factor for the same sources. Therefore, the predicted 24-hour and annual PM<sub>10</sub> concentrations will be a conservative predictor of PM<sub>2.5</sub> NAAQS compliance and is used as a surrogate.

The Standard Permit for Concrete Batch Plants is designed to be in compliance with these EPA standards and protective of public health, including sensitive members of the population. When a plant is operating in compliance with the permit, including the distance requirements, then no adverse health effects to off-property receptors (individuals, crops, cattle and livestock) are expected. The technical requirements contained in the Standard Permit for Concrete Batch Plants require (1) the suction shroud baghouse exhaust or truck mix point, to be located at least 100 feet from any property line; and (2) stationary equipment, stockpiles, or vehicles used for the operation of the concrete batch plant (except for incidental traffic and the entrance and exit to the site) may not be located or operated, respectively, within the following specified distances to any property line (i) for those facilities with production rates less than or equal to 200 cubic yards per hour, at least 25 feet; and (ii) for those facilities with production rates more than 200 and less than or equal to 300 cubic yards per hour, at least 50 feet.



## **EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT**

**Texas Concrete Enterprise, L.L.C. No. 91708**

**Page 4 of 6**

The Applicant certifies in its application it will be using a suction shroud for the truck drop with the exhaust air venting to a central dust collector, an emission point that will be located more than 100 feet from any property line. The Applicant also states the facility's production rate will be 180 cubic yards or less. This production rate triggers state rules requiring the Applicant to meet the 25 foot distance requirements for all applicable emission points. The Applicant represents that their application meets all distance requirements stipulated in the standard permit; therefore, the permit will be protective of any individuals within the vicinity of the facility.

The Executive Director's staff has conducted a thorough review of this permit application to ensure it meets the requirements of all applicable state and federal standards. Based on this review, if the Applicant operates its facility within the terms of the standard permit, the Executive Director has determined that adverse health effects are not expected.

**COMMENT 3:** All commenters were concerned regarding potential effects on property value.

**RESPONSE 3:** TCEQ has not been empowered by the Legislature to consider land use choices, which include facility location, building design, zoning, or effects on property values in its review of a Standard Air Quality Permit application. Except in limited circumstances, which do not apply to permit application no. 91708, the issuance of the permit cannot be denied on the basis of potential impacts to neighboring property values.

**COMMENT 4:** Mr. Charles and Ms. Hazel Taylor were concerned with potential road deterioration that might occur as a result of heavy truck traffic in the area.

**RESPONSE 4:** As stated in Response 3, the TCEQ's jurisdiction is limited to the issues set by the Legislature, and it does not have jurisdiction over traffic or road safety. The TCEQ is excluded from enforcing issues of traffic or road safety, per TCAA § 382.003, Definitions, which specifically excludes roads from the definition of "facility." Jurisdiction over traffic on public roads is thusly the responsibility of the cities, county, and/or other state agencies.

**COMMENT 5:** Several commenters were concerned regarding "attitudes" and "affects" of similar facilities in rural areas where homes, farms, and ranches are in nearby areas (Mr. Taylor, Mrs. Taylor, Ms. Smith, Mr. Dillard, Mr. Oscar Taylor, and Ms. Arlilia Taylor).

**RESPONSE 5:** The TCEQ has been known to receive public comment and opposition to the construction of concrete batch plants, regardless of where the facility is proposed to be located. The Executive Director recognizes the opposition to the plant from many of the commenters, but public opposition alone is not legally sufficient to justify denial of a standard permit registration application. Except in limited circumstances, which do not apply to permit application no.

## **EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT**

**Texas Concrete Enterprise, L.L.C. No. 91708**

**Page 5 of 6**

91708, the issuance of the permit cannot be denied on the basis of site location.

**COMMENT 6:** Ms. Newkirk wanted to know "how the numbers of citizens listing concerns" will impact the TCEQ's decision to authorize a public meeting.

**RESPONSE 6:** TCEQ rules require a public meeting to be held in the following situations: (1) if the Applicant requests, (2) if a Legislative representative of the area in which the facility is, or proposed to be located, requests, or (3) if the Executive Director determines a substantial or significant degree of public interest exists regarding the application. A determination of what is, or is not, a substantial or significant degree of public interest is evaluated on a case-by-case basis by a member of the Executive Director's staff. For Air Quality Standard Permit application 91708, neither the Applicant, nor a Legislative representative has requested the TCEQ to hold a public meeting. The Executive Director has received several requests to hold a public meeting, which are still under review by his staff. When this Response is filed, the Executive Director's decision regarding the public meeting requests will also be mailed to all requestors and those interested persons on the mailing list for this application.

**COMMENT 7:** Ms. Newkirk was concerned that the Applicant may operate the concrete batch plant in ways beyond mixing concrete. She was specifically concerned about potential "plans regarding concrete crushing," and wanted to know the likelihood, expressed in a percentage, that Texas Concrete Enterprise will crush concrete at this site in "3 years, 5 years, 7 years, [or] 10 years."

**RESPONSE 7:** Application 91708 is for an Air Quality Standard Permit for Concrete Batch Plant, issuance of which authorizes only the construction and operation of a concrete batch plant. The TCAA does not require Applicants to submit information regarding their future business models in order to comply with the requirements to obtain an Air Quality Standard Permit for a Concrete Batch plants. This proposed authorization cannot be amended to include a concrete crushing process; therefore, issuance of draft permit 91708 will not authorize Texas Concrete to operate "a concrete crushing" facility. Any modification in operations at the site that the Applicant may wish to pursue in the future including a "crusher" type facility would require the Applicant to apply for a new authorization.

**CHANGES MADE IN RESPONSE TO COMMENT**

No changes to the standard permit have been made in response to public comment.

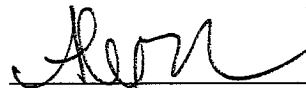
Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery P.G.  
Executive Director

Stephanie Bergeron Perdue, Deputy Director  
Office of Legal Services

Robert Martinez, Division Director  
Environmental Law Division



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Alexis Lorick, Staff Attorney  
Environmental Law Division  
Bar No. 24070174

Representing the Executive Director of the Texas  
Commission on Environmental Quality